

REMARKS/ARGUMENTS

Applicants elect Invention I, claims 1-10, 15, and 16, drawn to a “fat” cartridge and method of making the “fat” cartridge, classified in class 102, subclass 430. Applicants further elect species B, the “fat” cartridge, figs. 7B, 8B, 9, 10, 11, and 12 and sub-species B3, the “fat” cartridge of figs. 9 & 10. In light of the Examiner’s silence concerning Figures 13-19B, Figures 13-19B are generic to all claims. Consequently, Applicants believe that claims 1-10, 15, and 16 are generic to all species and sub-species.

Furthermore, Applicants respectfully traverse this Election/Restriction requirement.

Restriction to One Invention: Paragraphs 1-5

In the Office Action, the Examiner stated that “Inventions I and II are unrelated.” The Examiner then set forth the basis for this conclusion as being “Inventions are unrelated if it can be shown that they are not disclosed as being capable of use together **and** they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01).” Office Action, page 2 (emphasis added). The Examiner then justified the conclusion by stating that “invention I has not been disclosed as being capable of use with ... invention II.”

The sections of the MPEP cited by the Examiner are inappropriate for justifying a restriction requirement between inventions. Specifically, MPEP §803(I), which is entitled “Criteria for Restriction Between Patentably Distinct Inventions,” states that:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent (see MPEP § 802.01, § 806.06, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(j)); and
- (B) There would be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 808, and § 808.02).

Dependence of Inventions

MPEP § 808.06 states that “Inventions as claimed are independent if there is no disclosed relationship between the inventions, that is, they are unconnected in design, operation, and effect.” In this case, Invention I and Invention II are dependent in that the inventions “directed to improved cartridges and case-less gun chambers with reduced heat and acceleration losses.” Application, page 7, lines 3-4. To achieve the reduced heat and acceleration losses the chamber

and cases have dimensions that “provide for simultaneous burn in the propellant plug and propellant wall to reduce inefficiency and waste.” Application page 5, lines 7-8. Thus, Invention I and Invention II are connected in design, operation, and effect and thus, dependent because the claimed invention of the Application is provides for the same design, operation, and effect of the combustion chamber of a firearm, regardless of whether the combustion chamber is defined by a case and a chamber or a chamber alone.

Distinctness as claimed

MPEP § 806.05(j) states that “For other related product inventions, or related process inventions, the inventions are distinct if ... the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect.” (Emphasis added). As claimed, independent claim 1 and independent claim 11 both include similar features such as a relatively straight-walled body portion having an body diameter, a shoulder connected to the body portion at a body-to-shoulder junction, and a neck which defines a ratio of the body diameter to the neck diameter which is in the range from about 1.8:1 to 2.3:1, and a chamber or case sized and configured to contain a sufficient quantity of propellant that permits the formation of a propellant plug with the shoulder is connected to the neck at an angle of approximately 40 degrees or more which causes the propellant plug to shear free from unburned propellant that is disposed adjacent the relatively straight-walled body portion. These similar features provide Invention I and Invention II with a materially similar design, mode of operation, function, and effect.

Additionally, independent claim 11 has been amended to remove the element “case-less” from the preamble. Therefore, Invention I and Invention II have been disclosed as and are capable of use with each other.

Burden on the Examiner

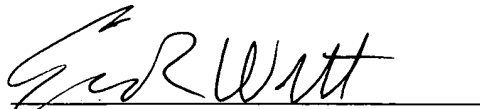
In the Office Action, the Examiner has asserted that Invention I and Invention II “have acquired separate status in the art as shown by their different classification.” However, should the Examiner choose to fully search the prior art for anticipating references, the search for either Invention I or Invention II should be made in both classifications. To do otherwise would result in only a partial and unjust search, because of the relatedness of Invention I and Invention II.

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Consequently, Applicants respectfully assert that restriction of claims 1-16 is not proper. Thus, Applicants respectfully request that this restriction and election requirement be withdrawn and that all claims be considered for prosecution on the merits.

If the Examiner requires any further information he is respectfully requested to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Evan R. Witt", is written over a horizontal line.

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